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Each office has a letter
to the President.



International Council of Shopping Centers

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Russell R. Pratt

Senior Staff Vice President
Government Relations

March 18, 1996

The Honorable William F. Caton

Acting Secretary

Federal Communications Commission

1919 M Street, N.W.

Room 222

Washington, D.C. 20554

RE: Telecommunications Services—Inside Wiring,
Customer Premises Equipment, CS Docket No. 95-184

Dear Mr. Caton:

Enclosed you will find nine copies of comments to the FCC's proposed
rulemaking on telecommunications services.

The International Council of Shopping Centers (ICSC) is the trade
association of the shopping center industry. Its 30,000 members in 60
countries represent owners, developers, retailers, lenders and all others
having a professional interest in the shopping center industry. Its over
26,000 U.S. members represent almost all the 40,000 shopping centers
in the United States.

Please feel free to contact me at 703/549-7404, ext. 224 if I can provide
further information. We appreciate the opportunity to provide
comments.

Sincerely,


Regina A. Brown

Manager, Environmental Issues

Enclosures: 9

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Senior Staff Vice President

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MAR 18 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS

OF THE

INTERNATIONAL COUNCIL OF SHOPPING CENTERS

REGARDING THE

NOTICE OF PROPOSED RULEMAKING

ON

TELECOMMUNICATIONS SERVICES: INSIDE WIRING,

CUSTOMER PREMISES EQUIPMENT

(CS DOCKET NO. 95-184)

OF THE

FEDERAL COMMUNICATIONS COMMISSION

MARCH 18, 1996

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**COMMENTS
OF THE
INTERNATIONAL COUNCIL OF SHOPPING CENTERS
REGARDING THE
NOTICE OF PROPOSED RULEMAKING
ON
TELECOMMUNICATIONS SERVICES: INSIDE WIRING,
CUSTOMER PREMISES EQUIPMENT
(CS DOCKET NO. 95-184)
OF THE
FEDERAL COMMUNICATIONS COMMISSION
MARCH 18, 1996**

I. Introduction

In response to the Notice of Proposed Rulemaking regarding telephone and cable inside wiring, CS Docket No. 95-184 ("NPRM"), the International Council of Shopping Centers (ICSC) submits the following comments and responses.

ICSC is the trade association of the shopping center industry. Its almost 29,000 members represent owners, developers, retailers, lenders, and all others having a professional interest in the shopping center industry. ICSC's over 26,000 U.S. members represent almost all of the 40,000 shopping centers in the United States.

In 1994, shopping centers accounted for \$880.2 billion dollars in retail sales or 56 percent of total non-automotive retail sales. These sales in shopping centers provided \$36.2 billion dollars in sales tax revenues for states and localities.

10,184,700 people, or 9 percent of total non-agricultural employment, were employed in shopping centers in 1994.

II. Comments and Responses

A. Shopping Centers

Shopping centers are a special type of commercial real estate that involves a unique interdependence and synergy between and among the shopping center and its tenants. Shopping center tenants pay relatively high rents to be located in a setting where they cooperate and compete with other retailers because of the high volume of customers attracted to the center by the combination of retailers and the facilities and amenities of the shopping center. The shopping center landlord designs the "tenant mix" of the center to maximize the customer traffic to be drawn from the center's "market area" by leasing to those retail stores that in combination will be most attractive to the potential customers in the market area. The shopping center landlord creates the desired tenant mix by choosing retail tenants based on their nature or "use", their quality, and their contribution to tenant mix, and by entering into leases which set forth and limit the uses to be made of the premises and the conditions and terms of operation within the center. Rents reflect the desirability and uniqueness of the tenant's use in relation to the tenant mix and vary among tenants on this basis.

The shopping center landlord's rental income generally is tied directly to the success of the shopping center through "percentage rents", i.e., rent based on a set base amount and an additional percentage of the lessee's gross sales.

The shopping center's tenants join together and pay common area maintenance fees and other fees to provide for the maintenance and operation of the common areas and the advertising of the shopping center in cooperation with the landlord, while, in some cases, controlling and paying for the maintenance and operation of the space leased to them.

Thus, in a shopping center, the interests of the landlord, the tenants, and their employees are intertwined and closely tied together in a symbiotic relationship not present in other types of real estate.

The retail trade is a fiercely competitive industry, and shopping centers are in direct competition with other shopping centers and free standing stores, including powerful retail chains.

In this competitive atmosphere, shopping centers are forced to create and maintain the most modern and updated physical facilities, including the provision of the most up-to-date technologies, communication and otherwise, for their tenants and customers.

B. Access to Private Property

As the Commission struggles, in this and in other rulemakings, to rationalize and adopt the existing patchwork of controls, which were designed to provide for the delivery of telecommunications services by a limited number of providers in a regulated, quasi-monopoly system, to an open, competitive, deregulated system of multiple service providers, the difficulties of imposing an effective new regulatory regime that does facilitate such a transition becomes more and more obvious.

While the Commission should address the barriers to competition imposed by the old system, it must disentrall itself from the concept that it can or should control the means and costs of telecommunication services, accept the logical consequences of deregulation, and move as rapidly as possible to an open competitive system.

While this may be difficult and sometimes traumatic, the Commission should be assured by the fact that throughout the economy where there are multiple providers and consumers, markets have shown themselves to be extremely efficient in dealing with the issues of service, price, and availability that the Commission regulated in the past and with which it is currently struggling.

It is in this regard that the question of what the Commission characterizes as "service provider access to private property" is so important.

In the real world of commercial real estate all of the questions the Commission proposes to deal with regarding the availability, quality and cost of service and alternative sources are dealt with through negotiations and agreements between free and independent parties. Thus, the shopping center owner and his tenants negotiate over and come to terms regarding the space and services to be leased and their costs, including what the landlord will provide to the tenant and what the tenant will provide for itself. It is in the context of these negotiations that independent providers of service are taken into account. For example, the landlord and the tenant may agree that cleaning services for the tenants will be provided under the lease by the landlord or by the tenant, in both cases, often by independent providers. All independent provider services are treated in a similar manner.

These negotiations involve specific facilities and parties, their needs, and the costs of satisfying such needs, and as the written legal agreement between parties sets the terms with remedies and penalties for non-performance; this long standing system of dealing with such service providers is extremely flexible and efficient.

In addition, leases and reciprocal easement agreements create other tenant rights which must be honored by landlords and which protect these tenants from other tenant or third party actions. These numerous landlord/tenant rights and obligations can create liabilities where third party interventions occur.

It is this model of operation which is the logical and natural result of deregulation and it is the model to which the Commission should move as rapidly as is practicable.

In the context of such a deregulated market of multiple providers and consumers, the concept that any and all or a selected number of service providers would have the right of access to private property without the consent and agreement of the property owner raises serious practical and legal problems that interfere with the efficient functioning of such a market and of the real property involved.

Granting such a right of access to private property to service providers creates real practical problems for owners and operators of shopping centers and other multi-tenant commercial real estate regarding space, security, liability, control, compliance with laws and regulations, and costs.

While the number of service providers will grow under the new system, the limitations on space remain. If the landlord cannot control access to his property and all service providers

have a right of access, will the property owner be obligated to expand without limit the space allocated for telecommunications to accommodate all who wish to use his facility? Will all who wish to do so be allowed to run wires where they wish without regard to the disruption in the operation of the facility and the physical changes in the building involved?

Security in shopping centers for tenants and customers is of great concern and high priority, and the problems of security created by the installation and maintenance of telecommunications by a multiplicity of providers will be great. Routinely, outsiders who come into a shopping center to work are required to give notice, are cleared by security, and their activities are monitored. With work being done in equipment rooms in close proximity to the equipment of other providers and of alarm and other security systems, the burdens on the shopping center management to maintain security will be significantly increased.

The presence of service providers and their equipment raise serious liability issues. Will the landlord be responsible for the environment of the equipment rooms and other parts of the property where the equipment and wiring of the service providers are present, i.e., temperature, power, fireproofing, security, etc., and liable for any damages that may result for the failure to maintain such an environment?

As explained above, shopping centers are carefully planned facilities that involve an interdependence and synergy among its tenants and is operated in a coordinated manner to attract customers. As such, the shopping center owner is expected, obligated, and paid to maintain the center in excellent condition and to control the activities in the center of the tenants, the customers, and any outside workers. The right of uncontrolled access will make this job much more difficult. This raises real concerns regarding compliance with laws and regulations.

All of the issues discussed above involve additional costs to the property owner that arise from the activities of service providers with the right of access to the private property, and without the ability to control access, the property owner will have a limited ability to recover these costs from such service providers. As a result, these costs will have to be borne by the property owner, the tenants, and, through higher prices, the customers of the shopping center.

In an open competitive system with multiple service providers and users and where property owners have the right to negotiate access to their property, all of the issues and problems discussed above are dealt with and resolved through negotiation and agreement. Thus, the rights and responsibilities of the parties are defined, and the risks, liabilities, and costs involved are allocated and apportioned.

While some service providers will come to terms with the property owner and/or its tenants, and others may not, these results will be determined, and rightly so, by the ability of the various service providers to meet the needs of the property owner and its tenants on a competitive basis. As discussed above, the tenants, either through provisions of their leases or through the property owners interest and desire in accommodating their needs, will play a significant, if not determinative, role regarding their needs.

In addition to the practical problems, it is extremely difficult to legally, or morally, justify giving any or all or particular service providers a right of access to private property without the consent of the property owner in a deregulated market of multiple providers.

To the extent that such rights of access currently exist and it is advisable, as it is, to create access parity, the solution is to eliminate such rights of access for all service providers, restore the rights of property owners to control their property, and allow for free competition and negotiation as exists in other regulated markets.